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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,028	10/22/2003	James Russell Curtis	200314220-1	5010

22879 7590 08/27/2007

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EXAMINER

DAO, THUY CHAN

ART UNIT	PAPER NUMBER
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2192

MAIL DATE	DELIVERY MODE
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08/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/691,028

Applicant(s)

CURTIS ET AL.

Examiner

Thuy Dao

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendment filed on June 24, 2007.
2. Claims 1, 3-6, and 8-10 have been examined.

Response to Amendments

3. Per Applicants' request, claims 1, 3, and 6 have been amended.
4. The objection to claim 3 is withdrawn in view of Applicants' amendments.

Response to Arguments

5. The Applicants are thanked for a thorough reply. Applicants' arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Objection

6. Claim 6 is objected to because of minor informalities. Line 11, the phrase is considered to read as - -... on said [[use]] user system... - -.

Appropriate correction is required.

Claim Rejections – 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3-6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,141,010 to Hoyle (art made of record, hereinafter "Hoyle").

Claim 1:

Hoyle discloses *a method comprising:*

launching an application on a user system (e.g., FIG. 1, col.7: 13-26; col.3: 34-38; col.4: 10-13);

tracking usage of said application so as to generate usage data on said user system (e.g., col.5: 18-23, 37-41; col.6: 62 – col.7: 13; col.12: 27-31);

accessing an update site from said user system; transferring said usage data from said user system to said update site (e.g., FIG. 10, blocks 168 and 182; col.7: 5-13, 41-47);

said update site prioritizing updates at least in part as a function of said usage data (e.g., FIG. 11, col.19: 11-50; FIG. 7, col.14: 38 – col.15: 28); and

said update site presenting to a user a list of said updates as prioritized in said prioritizing step (e.g., col.5: 62 – col.6: 5; FIG. 12 and related text; col.4: 41-49; col. 14: 38 – col.15: 28).

Claim 3:

The rejection of claim 1 is incorporated. Hoyle also discloses *said user selects one or more of said updates for said application (e.g., col.15: 14-28).*

Claim 4:

The rejection of claim 3 is incorporated. Hoyle also discloses *said selected ones of said updates are installed so as to modify said application (e.g., FIG. 10, block 188/YES and related text).*

Claim 5:

The rejection of claim 1 is incorporated. Hoyle also discloses *further development of said application is directed in part as a function of said usage data (e.g., FIG. 10, block 190, Builder Routine).*

Claim 6:

Hoyle discloses *a software program set on computer readable media, said software program set comprising:*

a usage data evaluator for receiving and evaluating raw usage data received provided by a user computer system (e.g., FIG. 1, col.7: 13-26; col.3: 34-38; col.4: 10-13);

regarding a version of a software application installed thereon (e.g., col.5: 18-23, 37-41; col.6: 62 – col.7: 13; col.12: 27-31),

said usage data evaluator providing evaluated usage data (e.g., FIG. 10, blocks 168 and 182; col.7: 5-13, 41-47);

an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data (e.g., FIG. 11, col.19: 11-50; FIG. 7, col.14: 38 – col.15: 28);

a web interface for communicating with said user computer system via a browser on said user system as as to present and a list of said updates as prioritized by said prioritizer (e.g., col.5: 62 – col.6: 5; FIG. 12 and related text; col.4: 41-49).

Claim 8:

The rejection of claim 6 is incorporated. Hoyle also discloses *said web interface specifies, for at least some of said updates, advantages over said version of said application* (e.g., FIG. 7, col.14: 59 – col.15: 28).

Claim 9:

The rejection of claim 6 is incorporated. Hoyle also discloses *a usage-tracking module installed on said user computer system* (e.g., col.7: 27-67; col.8: 7-29).

Claim 10:

The rejection of claim 9 is incorporated. Hoyle also discloses *said usage-tracking module is integrated with said version of said application* (e.g., col.6: 62 – col.7: 13).

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Publication No. 2003/0191730 A1 to Adkins et al. (art made of record, hereinafter "Adkins").

Claim 1:

Adkins discloses *a method comprising:*

launching an application on a user system; tracking usage of said application so as to generate usage data on said user system (e.g., FIG. 4, [0044], [0046], [0048]; [0018-0020]);

accessing an update site from said user system; transferring said usage data from said user system to said update site (e.g., FIG. 4, [0052-0054]; [0066]);

said update site prioritizing updates at least in part as a function of said usage data (e.g., [0050], [0060], [0067]); and

said update site presenting to a user a list of said updates as prioritized in said prioritizing step (e.g., [0048], [0050], [0053-0057], [0066]).

Claim 3:

The rejection of claim 1 is incorporated. Adkins also discloses *said user selects one or more of said updates for said application (e.g., [0053-0057]).*

Claim 4:

The rejection of claim 3 is incorporated. Adkins also discloses *said selected ones of said updates are installed so as to modify said application (e.g., [0048-0050], [0060]).*

Claim 5:

The rejection of claim 1 is incorporated. Adkins also discloses *further development of said application is directed in part as a function of said usage data (e.g., FIG. 6, [0067-0070])*.

Claim Rejections – 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins in view of Meyer (art of record, US Patent No. 7,016,944).

Claim 6:

Adkins discloses *a software program set on computer readable media, said software program set comprising:*

a usage data evaluator for receiving and evaluating raw usage data received provided by a user computer system; regarding a version of a software application installed thereon (e.g., FIG. 4, [0044], [0046], [0048]; [0018-0020]),

said usage data evaluator providing evaluated usage data (e.g., [0052-0057]; [0066]);

an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data (e.g., [0048-0050]; [0060]; [0066-0067]);

an interface for communicating with said user computer system via a browser on said user system as as to present and a list of said updates as prioritized by said prioritizer (e.g., [0048-0050]; [0053-0057]; [0066]).

Rajan does not explicitly disclose *a web interface*.

However, in an analogous art, Meyer further discloses *a web interface* (e.g., FIGs. 5-7, col.6: 12 – col.7: 32; col.3: 32-44; col.6: 13-35).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teaching of Meyer into that of Rajan. One would have been motivated to do so to alert the user to the presence of any upgrades available for computer information on the user's computer and allow the user to determine which of the available upgrades will be downloaded to the user's computer and installed as suggested by Meyer (e.g., col.2: 42 – col.3: 10).

Claim 8:

The rejection of claim 6 is incorporated. Adkins also discloses *said web interface specifies, for at least some of said updates, advantages over said version of said application* (e.g., [0052-0057]).

Claim 9:

The rejection of claim 6 is incorporated. Adkins also discloses *a usage-tracking module installed on said user computer system* (e.g., [0044-0048]).

Claim 10:

The rejection of claim 9 is incorporated. Adkins also discloses *said usage-tracking module is integrated with said version of said application* (e.g., [0018-0020]; [0066-0067]).

Conclusion

13. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication should be directed to examiner Thuy Dao (Twee), whose telephone is (571) 272 8570. The examiner can normally be reached on Tuesday, Thursday, and Friday from 6:00AM to 6:00PM.

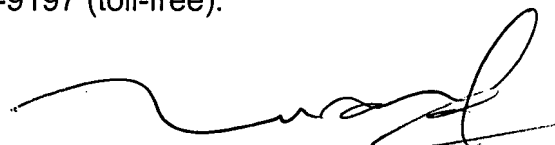
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is (571) 272 2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T. Dao



TUAN DAM
SUPERVISORY PATENT EXAMINER